

Decision 04-12-024

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order instituting Rulemaking on the Commission's Own Motion to Assess and Revise the new Regulatory Framework for Pacific Bell and Verizon California, Incorporated.

Rulemaking 01-09-001  
(Filed September 6, 2001)

Order Instituting Investigation on the Commission's Own Motion to Assess and revise the New Regulatory Framework for Pacific Bell and Verizon California, Incorporated.

Investigation 01-09-002  
(Filed September 6, 2001)

**ORDER DENYING APPLICATION FOR LIMITED REHEARING  
OF DECISION 04-07-036, DENYING MOTION FOR STAY  
OF ORDERING PARAGRAPH 14 OF  
DECISION 04-07-036, AND MODIFYING  
DECISIONS 03-10-088 AND 04-07-036**

**I. SUMMARY**

The Public Utilities Commission of the State of California ("Commission") denies Pacific Bell Telephone Company's ("Pacific" or "SBC", dba SBC California), Application for Limited Rehearing of Decision (D.) 04-07-036 and denies Pacific's Motion For Stay of Ordering Paragraph ("OP") 14 of D.04-07-036, because Pacific has not established legal error or grounds for a stay. We modify Decision (D.) 03-10-088 by deleting any references to substantial confusion about the NRF P.A. 02-03 monitoring reports. In response to Pacific's Application for Limited Rehearing of D.04-07-036, we modify Ordering Paragraph 14 in D.04-07-036 to clarify that Pacific must submit the

customer surveys and results identified by Overland Consulting (Overland) on p.21-19 of its Regulatory Audit of Pacific Bell For the Years 1997, 1998 and 1999, Vol. 2, February 21, 2002, Exh.2A:404. Overland identified these surveys in two data responses: OC-497 and OC-891. These surveys were conducted by third party research firms on behalf of Pacific Bell. We modify D.03-10-088 to remove language that substantial confusion existed as to whether the surveys should have been given to Overland. We see no need for evidentiary hearings on this question. Whether or not these surveys should have been produced as NRF P.A. 02-03 monitoring reports is beside the point. These surveys are relevant to core issues in this proceeding: customer satisfaction and service quality. We expect that Pacific will supply the surveys identified by Overland and discussed in more detail below or that Pacific will respond in writing that the surveys, whether properly categorized as P.A. 02-03 monitoring reports or not, do not exist and have never existed. We modify OP 14 to ensure that the Commission receives all customer surveys for the relevant reporting period, prepared either by Pacific or a third party on behalf of Pacific, and not previously provided to the Commission under either P.A. 02-04 or any other reporting requirement. We further admonish Pacific not to waste the Commission's resources further with irrelevant arguments as to whether these reports, identified by Overland, are properly categorized as P.A. 02-03 surveys and results.

## **II. BACKGROUND**

In Decision (D.) 89-10-031, we established the New Regulatory Framework (NRF) as a means of regulating both Pacific and Verizon California, Inc. (Verizon). NRF is a form of incentive-based regulation that offers an alternative to rate-of-return regulation. The NRF framework, implemented in 1990,<sup>1</sup> relaxed rate regulation of certain large telephone companies in California with the goal of promoting lower costs, innovation, and price stability. We acknowledged in setting up NRF that the incentive to cut costs might hurt customers and service quality if the carriers cut too deeply. Recognizing that the availability of high quality service was one of the central goals of

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<sup>1</sup> D.89-10-031, 1989 Cal. PUC LEXIS 576, 33 CPUC 2d 43 (1989), 107 PUR 4<sup>th</sup> 1 (1989).

NRF,<sup>2</sup> we set up a process for monitoring Pacific's and Verizon's service quality to ensure that they were striking the appropriate balance between cost cutting and good customer service. Thus, in D. 89-10-031, we required periodic reviews of Pacific's and Verizon's service quality under NRF by our staff. Moreover, we stated that if the monitoring efforts revealed that ratepayers were being harmed through deteriorating service quality, we would take immediate steps to rescind or alter NRF.<sup>3</sup>

On September 6, 2001, we issued an Order Instituting Rulemaking 01-09-001 and Order Instituting Investigation 01-09-002 establishing a proceeding to assess and possibly revise elements of NRF for Pacific and Verizon. The Order divided the proceeding into three Phases: Phase 1 addressed factual issues related to the audit of Verizon conducted by the Office of Ratepayer Advocates (ORA); Phase 2 addressed both factual issues related to the audit of Pacific that was being conducted by the Telecommunications Division (referred to as "Phase 2A") and the quality of service that was provided by Pacific and Verizon (referred to as "Phase 2B"). In Phase 3, we will determine whether and how NRF should be revised based, in part, on the record developed in Phase 2.

During the audit portion of Phase 2, Overland identified customer surveys conducted on behalf of Pacific by third party research firms that Overland believes should have been filed during the NRF period as NRF P.A. 02-03 monitoring reports.<sup>4</sup> According to Overland, these specific customer surveys, conducted under Pacific's Customer Service Quality (CSQ) process, were directed at customers who had recent experiences with Pacific in the areas of sales, billing, maintenance, installation, and operator services. Overland identified these surveys as ones required under NRF P.A. 02-03, which refers to surveys given to customers who have direct contact with Pacific that are used to measure customer satisfaction levels and perceptions of the company.

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<sup>2</sup> D.89-10-031, 33 CPUC 2d at 92, 197.

<sup>3</sup> *Id.* at 153.

<sup>4</sup> Exh. 2A:404, at 21-19 (Audit Report)

Overland tried to obtain these surveys, and the results thereof, from Pacific in two different data requests, but Pacific refused to provide them.<sup>5</sup>

In response to Overland's assertion that Pacific failed to file the surveys as required, Pacific stated, "It is possible Overland has confused two monitoring reports, P.A. 02-03 and P.A-02-04. Pacific understands that P.A-02-03, Customer Survey Report, refers to surveys initiated by the Commission. . . ."<sup>6</sup> Thus, Pacific stated that it understood the NRF P.A. 02-03 monitoring requirement to only require it to file customer surveys when the Commission initiates a survey. Moreover, Pacific argued that it should not be obliged to produce its customer surveys because the requirement "has not been raised by the Commission or its staff in the last 11 years. . . ."<sup>7</sup>

In D. 03-10-088, we found that there was substantial confusion regarding the NRF monitoring reports and decided to resolve the reporting confusion in Phase 3 of the NRF proceeding. (D. 03-10-088, p. 137.) We stated that the "central question that we will address is whether Pacific has provided the Commission all the data it has. From our review of the record, it appears that this simple question was never asked nor answered." (*Id.*)

ORA and TURN applied for rehearing of D. 03-10-088 raising several issues, including that we had arbitrarily excused Pacific's failure to provide the Commission with the customer surveys identified by Overland as those required under the NRF P.A. 02-03.

In D. 04-07-036, we granted rehearing regarding ORA and TURN's assertion that D. 03-10-088 arbitrarily excused SBC's failure to file the identified customer surveys under NRF P.A. 02-03. (D. 04-07-036, p. 7.) We determined that we erred in D. 03-10-088 when we stated that the simple question of whether Pacific had provided us with all the customer survey data it had was never asked or answered. (*Id.*, citing D. 03-10-088, p. 137.) We found that a clear inference could be drawn from the

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<sup>5</sup> Exh. 2A:404, at 21-19 (Audit Report), OC 497 and OC 891.

<sup>6</sup> Exh. 2B:340 at 22-23 (Hayes Direct Testimony).

<sup>7</sup> Exh. 2B:340 at 22-23 (Hayes Direct Testimony).

evidentiary record that Overland did ask Pacific for the customer surveys it identified as required under NRF P.A. 02-03, and that Pacific refused to provide them.<sup>8</sup>

Thus, it was clear that Pacific had not turned over all of its customer survey data. We also determined that neither Pacific's confusion about the NRF P.A. 02-03 monitoring reports nor our failure to raise the requirement of compliance over the past 11 years was a good reason for Pacific's current lack of compliance. Most important, we clarified that "P.A. 02-03 customer surveys refer not only to Commission-initiated customer surveys, but to Pacific's own surveys as well." (D. 04-07-036, p. 8.)

Thus, we granted rehearing regarding the customer surveys issue, among others, and ordered SBC to produce the customer surveys and results thereof that Overland identified as required under NRF P.A. 02-03 for the relevant time period under NRF. Moreover, we ordered that all parties be given the opportunity to cross-examine a sponsoring witness on behalf of SBC about these surveys. (D. 04-07-036, p. 12, OP 14.) We intended in our Order in D. 04-07-036 to require SBC to provide the customer surveys identified by Overland that were conducted by third party research firms on behalf of Pacific.

On August 12, 2004, SBC filed an Application for Limited Rehearing of D. 04-07-036, alleging that our order requiring SBC to produce its customer surveys and present a witness for cross-examination in regard to those surveys results in both factual and legal error. (Rhg. App., p. 1.) SBC also filed a Motion For Stay of Ordering Paragraph 14 of D. 04-07-036 ("Motion For Stay") accompanied by the Declaration of Jamie Malone, one of its employees.

In its Motion For Stay, SBC alleges that it is "unable to comply without explicit clarification of the "substantial confusion" regarding what the P.A. 02-03 monitoring reports encompass." (Motion For Stay, p. 1.) Specifically, SBC alleges that "[f]actual error occurred because the evidentiary record does not support the conclusion that P.A. 02-03 monitoring reports refer to SBC's own surveys. . . ." and that legal error

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<sup>8</sup> Exh. 2A:404, at 21-19 (Audit Report), OC 497 and OC 891.

occurred by denying SBC due process. SBC argues that it should be allowed to present evidence at hearings to resolve “issues concerning the reporting of survey data under P.A. 02-03,” as contemplated by D. 03-10-088. Additionally, SBC alleges that under Section 1708, it must be afforded an opportunity to present its position in hearings – either in additional evidentiary proceedings on rehearing or in Phase 3B as contemplated by D. 03-10-088. (*Id.* at pp. 1-2.)

On August 27, 2004, ORA filed a Response in Opposition to both SBC’s Application for Limited Rehearing and Motion For Stay. ORA alleges that both the Application for Limited Rehearing and the Motion For Stay are without merit, and that the Commission has the constitutional and statutory authority to order SBC to provide its customer surveys. (ORA’s Response, p. 2.) Thereafter, on September 7, 2004, SBC filed a Reply to ORA’s Response to SBC’s Motion for Stay.

### **III. DISCUSSION**

#### **A. The Commission Possesses Both Constitutional And Statutory Authority To Order SBC To Provide The Relevant Customer Surveys.**

SBC ignores our broad constitutional and statutory authority empowering us to order SBC to provide us with the customer surveys in issue.<sup>9</sup>

Section 314 of the Public Utilities Code<sup>10</sup> provides as follows:

“(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the

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<sup>9</sup> See Cal. Const. Art. XII, § 5.

<sup>10</sup> All Section references are to the Public Utilities Code, unless otherwise indicated.

testimony or statement so given under oath shall be made and filed with the commission.

“(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business which is a subsidiary or affiliate of, or a corporation which holds a controlling interest in, an electrical, gas, or telephone corporation with respect to any transaction between the electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the electrical, gas, or telephone corporation.”

Section 314 encompasses the fundamental principle governing the transfer of information from a regulated public utility to this Commission and its employees. Significantly, subdivision (a) of Section 314 does not contain limiting or qualifying conditions on the right to inspect utility documents. It does not limit the right to inspection to the existence of a Commission proceeding, or even require particular justification. There is no limitation placed on the type of papers or documents that may be inspected; for example, documents that would otherwise not be admissible in court as evidence. Furthermore, subdivision (b) of Section 314 extends the right of inspection to any business, which is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, the regulated utility.

We have clear constitutional and statutory authority to order SBC to produce any and all customer surveys. SBC’s objections to turning over the material identified by Overland, as set forth in its Application for Limited Rehearing and Motion For Stay, are without merit and SBC’s position is inconsistent with the reporting requirements adopted in D. 91-07-056.<sup>11</sup> SBC is a regulated utility and therefore subject to our broad constitutional and statutory authority to require it to turn over the customer surveys, and results thereof, identified by Overland as described earlier on page 2 of this decision.

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<sup>11</sup> D. 91-07-056, Ordering Paragraphs (OP) 1 and 3, 41 CPUC 2d at 128-30.

**B. The Commission Did Not Err In Its Factual Conclusions About The NRF P.A. 02-03 Monitoring Reports.**

SBC, in its Application for Limited Rehearing, alleges that “the Rehearing Decision commits factual error by concluding that P.A. 02-03 reports refer to SBC California’s own customer surveys. . . . The actual facts demonstrate that P.A. 02-03 reports do not refer to SBC California’s own surveys. The lack of any evidence on this point is the reason that the original Phase 2B Service Quality Decision properly concluded that there was ‘substantial confusion.’” (Rhg. App., pp. 3-4.) SBC insists that the P.A. 02-03 requirement refers “only to surveys initiated by the Commission – not to those conducted by SBC California.” (*Id.* at p. 4.)

In the final analysis, SBC’s argument is beside the point. The point is that the Commission has required SBC to submit certain studies that have never been provided to the staff. To continue the debate over “as initiated” borders on the frivolous. However, we agree with SBC that our finding of “substantial confusion” in D.03-10-088, p. 135) should be deleted to reflect our decision in D.04-07-036, and we do so in this order.

We find there is no basis for SBC/ Pacific’s “confusion” over this issue. The record supports the finding that “as initiated” used by P.A. 02-03 includes surveys prepared by Pacific or by third parties at Pacific’s request. SBC is well aware of the fact that we set up a process for monitoring Pacific and Verizon’s service quality under NRF. After completing a series of workshops in 1990 that both Pacific and Verizon participated in, we issued D. 91-07-056, adopting a comprehensive monitoring program for both these carriers “as described and envisioned in the Commission’s Advisory and Compliance Division’s (CACD) three workshop reports... [including]...the reporting requirements recommended in CACD’s Workshop II Report...”<sup>12</sup>

In D. 91-07-056, we directed staff to produce “a written assessment explaining who prepares each monitoring report that the utilities provide to our staff, and

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<sup>12</sup> D. 91-07-056, Ordering Paragraphs (OP) 1 and 3, 41 CPUC 2d at 128-30.



what purpose each of these reports serves for the utility and for the staff.”<sup>13</sup> The staff’s Monitoring Report Assessment, filed on May 1, 1992, contained the following description of “Customer Surveys” Pacific is required to file with the Commission under NRF P.A. 02-03:

“6. Customer Surveys: These surveys are given to customers who have direct contact with Pacific Bell and are used to measure customer satisfaction levels and perceptions of the company. These surveys are conducted through the Corporate Research organization at Pacific Bell, and historically have been provided to the DRA Telecommunications Rate Design Branch, and is [sic] used in DRA’s ongoing service quality evaluation. The surveys are provided as initiated. It is recommended that these surveys continue.”<sup>14</sup> (Emphasis added.)

SBC, in its Motion For Stay and Declaration of Jamie Malone, indicate that Pacific not only participated in the workshops that resulted in the 1992 Monitoring Report Assessment, but was familiar with the above-noted description of NRF P.A. 02-03 monitoring reports. (Motion For Stay, pp. 11-12; Declaration of Jamie Malone, pp. 6-7.) Given those facts, we find no support for SBC’s assertion that the NRF P.A. 02-03 monitoring reports refer “only to surveys initiated by the Commission – not to those conducted by SBC California.” (Rhg. App., p. 4.)

Furthermore, a review of “Attachment A” to the Monitoring Report Assessment indicates under the column entitled “Frequency,” referring to frequency of filing, that the P.A. 02-03 monitoring reports are to be filed with the Commission “as initiated.” In other words, when the Commission requests the surveys from SBC, SBC is required to provide them.

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<sup>13</sup> *Id.*, OP 6.

<sup>14</sup> *New Regulatory Framework Monitoring Report Assessment*, I.87-11-033, Commission Advisory and Compliance Division, May 1, 1992, at 6 and 60. We find a significant difference between the information that is to be reported under P.A. 02-03 and P.A. 02-04: P.A. 02-03 requires Pacific to provide us with the actual surveys and the results thereto, regardless of the outcome of those surveys; P.A. 02-04, on the other hand, allows Pacific to summarize the percentage of customers that are satisfied with its service quality and report these results monthly. Pacific has complied with its requirement to file P.A. 02-04 customer surveys.

Thus, we do not find any merit to SBC's allegation that the NRF P.A. 02-03 monitoring reports refer "only to surveys initiated by the Commission – not to those conducted by SBC California." (Rhg. App., p. 4.) Not only did SBC fail to comply with Overland's discovery requests for the identified customer surveys during the proceeding, but it also failed to comply with the reporting requirements we adopted in D. 91-07-056.

In any event, even if the record supported a finding of substantial confusion, we find this debate irrelevant. Overland identified certain surveys related to the core issues of service quality and customer satisfaction. We want Pacific to provide those surveys, whether they are required, in Pacific's opinion, to be submitted under P.A. 02-03 or not.

**C. The Commission Did Not Rely On Extra-Record Evidence  
In D. 04-07-036**

SBC also alleges that the P.A. 02-03 monitoring reports were not an issue in the service quality portion of Phase 2B of this proceeding, no testimony was introduced on the subject, and the issue only arose after hearings when ORA asserted in its post-hearing reply brief that SBC California withheld its P.A. 02-03 surveys. Because there was no testimony on the subject in the service quality portion of Phase 2B, SBC alleges that ORA "relied upon extra record evidence – the Overland Consulting audit – to make its arguments." (Rhg. App., p. 2.) SBC further alleges that "[w]hile Phase 2B addressed service quality for SBC California, there were also separate hearings held and a separate record developed in Phase 2B on Overland audit issues." (*Id.*, see fn. 4.) Therefore, SBC alleges that our new findings in D. 04-07-036 are not supported by record evidence. (Rhg. App., p. 4.)

SBC ignores the fact that service quality and audit issues were heard in Phase 2B as part of one proceeding, as ordered by us in Rulemaking 01-09-001 and Order Instituting Investigation 01-09-002, wherein we established a proceeding to assess and possibly revise elements of NRF for Pacific and Verizon. Even if there were separate hearings in regard to audit issues, the evidence and record produced at hearings concerning the audit are part of the overall record produced in this one proceeding. More

important, however, is the fact that the customer surveys identified by Overland during the audit are directly related to the issues of service quality addressed in the service quality phase of this proceeding. Therefore, we find SBC's contention that there is no record evidence to support our findings in D. 04-07-036 to be erroneous and without merit.

**D. D.04-07-036 Does Not Deny SBC California Due Process**

SBC alleges that we violated its due process by not allowing SBC to present evidence at hearings to resolve issues concerning the reporting of survey data under P.A. 02-03, as contemplated by D. 03-10-088. (Rhg. App., p. 1.) Specifically, SBC alleges that under Section 1708, it must be afforded an opportunity to present its position in hearings – either in additional evidentiary proceedings on rehearing or in Phase 3B as contemplated by D.03-10-088. (*Id.* at pp. 1-2.) Moreover, SBC asserts that it expected to “clear the confusion and lay out the facts in Phase 3B that show that the P.A. 02-03 monitoring requirement relate only to Commission-initiated surveys – not SBC California's own surveys. (*Id.* at p. 3.) In other words, SBC is alleging that it has a due process right to a hearing regarding its confusion about the P.A. 02-03 monitoring requirements.

SBC's argument lacks merit. First, there is no Section 1708 issue because D. 03-10-088 is not yet a final decision. Second, our decision (D. 04-07-036) granting rehearing and ordering SBC to produce what we have identified as customer surveys and the results thereof for the relevant time period reviewed under NRF affords SBC both notice and the opportunity to argue what weight those surveys should be given. Moreover, as discussed above, we believe Pacific's customer surveys are required under the NRF P.A. 02-03 monitoring requirement. A review of the 1992 Monitoring Report Assessment has clarified that Pacific, now SBC, is responsible for conducting these customer surveys and submitting such surveys and the results thereof to us as initiated, in other words, as requested by us.

When we implemented NRF, we stated as follows:

“We direct the utilities to fully cooperate in providing all necessary information. . . . Indeed, we view the success of the new regulatory framework as inextricably linked to the quality of the Commission’s access to utility information. To make this more credible, we will insist on more cooperation, not less, in sharing of information. We will not tolerate actions which obstruct the audits and investigations of the Commission staff, whichever division is involved. . . .”<sup>15</sup>

SBC’s hairsplitting over the meaning of “as initiated” has obstructed this Commission’s ability to evaluate service quality and customer satisfaction, key issues in the NRF process, and has wasted many hours of Commission time. In any event, given our broad regulatory authority over SBC and Pacific, the question of whether the surveys requested by Overland did or did not fall under P.A. 02-03 is irrelevant to the company’s obligation to produce the surveys. SBC must comply with this Order to produce the customer surveys and results thereof identified by Overland on p.21-19 of Volume 2 of its Report, and with OP 14 as modified herein.

**E. SBC’s Motion For Stay Of Ordering Paragraph 14 Of D.04-07-036 Is Denied**

In D.04-07-036, we found that “[a]lthough Pacific was confused by the requirements for P.A. 02-03 customer surveys we do not find that Pacific’s confusion nor the Commission or staff’s failure to raise the requirement over the past 11 years is a good reason for Pacific’s current lack of compliance with the NRF requirement.”

(D.04-07-036, p. 7.) Therefore, in an effort to resolve any confusion about the P.A. 02-03 customer surveys, we clarified that the P.A. 02-03 customer surveys refer “not only to Commission-initiated customer surveys, but to Pacific’s own surveys as well.” (*Id.* at p. 8.) We then ordered “Pacific to produce its P.A. 02-03 customer surveys and the results thereof for the relevant time period reviewed under NRF. All parties shall be given the opportunity to cross-examine a sponsoring witness on behalf of Pacific about these items.” (*Id.* at p. 12, OP 14.)

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<sup>15</sup> D.89-10-031, 33 CPUC 2d at 196 (emphasis added).

SBC seeks a stay of OP 14 of D. 04-07-036, stating that it is “unable to comply without explicit clarification of the “substantial confusion” regarding what the P.A. 02-03 monitoring reports encompass.” (Rhg. App., p. 1.) SBC alleges that the Commission “has failed to provide sufficient clarification to enable SBC to comply with an order that it produce surveys that it “historically [ ] provided to DRA Telecommunications Rate Design Branch.” SBC requires clarification because “historically it never provided the Division of Ratepayer Advocates (“ORA”) with any surveys. Instead, in the period preceding NRF, all that was ever provided was notice that the surveys would be taking place so that the Commission could field potential calls from consumers with questions about those surveys, and a copy of an internal company newsletter publication called Update, which contained a section entitled “Quality of Service Performance.” (Rhg. App., p. 2.) SBC states that “[b]eginning in October 1991, Pacific Bell began providing its QSP survey result reports under the P.A. 02-04 requirement instead of providing the Update Newsletter. Because Pacific Bell had never provided other customer survey data to DRA, regulatory personnel concluded that the P.A. 02-03 requirement referred to surveys initiated by the Commission – not those initiated by Pacific Bell.” (Declaration of Jamie Malone, p. 7.)

SBC further states that its “past practices, the record from the Monitoring Workshops, CACD’s adoption of Pacific Bell’s monitoring proposal, and a host of other documents all indicate that historically SBC never provided the Commission with customer survey data other than “Quality of Service Performance” or “QSP” information found initially in the Update company newsletter and later provided under the P.A. 02-04 report.<sup>16</sup> SBC refuses to provide any surveys in response to D.04-07-036, and reads OP 14 as at most, only requiring notice of surveys on a going forward basis.” (Motion For Stay, p. 2.) SBC argues that because historically it didn’t provide us with the P.A. 02-03 customer surveys, it will not do so now.

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<sup>16</sup> (SBC’s Motion To Stay, p. 2, citing Declaration of its Employee, Paragraphs. 3-5, 8.)

SBC's Motion For Stay and the accompanying Declaration of Jamie Malone indicate that Pacific was well aware of the historical development of the NRF monitoring requirements, including the NRF P.A. 02-03 monitoring reports. (Motion For Stay, p. 3; Declaration of Jamie Malone, pp. 1-8.) In fact, said documents indicate that Pacific participated in the monitoring workshops resulting in CACD's Monitoring Report Assessment (May 1, 1992) and are familiar with the description of the NRF P.A. 02-03 monitoring reports. (Motion For Stay, pp. 11-12; Declaration of Jamie Malone, pp. 6-7.) As discussed above, Item 6 of the report states that the P.A. 02-03 customer surveys "are conducted through the Corporate Research organization at Pacific Bell. . . . The surveys are provided as initiated."<sup>17</sup>

We therefore again reject the contention that the NRF P.A.02-03 monitoring reports do not encompass surveys conducted by Pacific or at its direction but only covers customer surveys conducted by Commission staff or at its direction, since the definition of the NRF P.A. 02-03 customer surveys clearly states that "[t]hese surveys are conducted through the Corporate Research organization at Pacific Bell, and historically have been provided to the DRA . . . ." (Emphasis added.)

There is no basis for staying OP 14. We will, however, use this opportunity to clarify OP 14 to leave no doubt in anyone's mind, that we want SBC to provide the Commission with the Overland - identified customer surveys, whether or not they fall under the category of the NRF P.A. 02-03 monitoring reports or some other title or category, and whether or not the surveys were "initiated" by the Commission or by "Pacific".

#### **IV. CONCLUSION**

SBC has failed to establish factual or legal error. We, therefore, deny SBC's Application for Limited Rehearing of D. 04-07-036 and deny SBC's Motion For Stay of Ordering Paragraph 14 of D. 04-07-036. We modify D. 03-10-088 to delete references to "substantial confusion" about the NRF P.A. 02-03 monitoring reports, and

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<sup>17</sup> *New Regulatory Framework Monitoring Report Assessment*, I.87-11-033, Commission Advisory and Compliance Division, May 1, 1992, at 6 and 60 (emphasis added).

to clarify that we consider the customer surveys identified by Overland, conducted by third party research firms on behalf of Pacific, as well as any customer surveys conducted by Pacific itself to fall under the NRF P.A. 02-03 monitoring reports. We also clarify OP 14 in D.04-07-036 to order SBC to provide the Commission with the customer surveys identified by Overland, and the results thereof, conducted by third party research firms on behalf of Pacific or SBC. In addition, we modify OP 14 to order SBC to provide the Commission with any other surveys, and the results thereof, prepared by Pacific or SBC themselves, or conducted by third party research firms on behalf of Pacific or SBC, for the relevant NRF reporting time period.

**THEREFORE, IT IS ORDERED** that:

1. SBC's Application for Limited Rehearing of D. 04-07-036 is denied.
2. SBC's Motion For Stay of Ordering Paragraph 14 of D. 04-07-036 is denied.
3. On page 135 of D. 03-10-088, the first sentence of the first full paragraph that reads, "We have reviewed the origins and purposes of reports P.A. 02-03 and P.A. 02-04, and find substantial confusion." is deleted.
4. On page 135 of D. 03-10-088, directly under the quotation beginning with "6. Customer Surveys," the sentence that reads, "This appears to accurately describe the data submitted under P.A. 02-04." is deleted.
5. On page 136 of D. 03-10-088, directly under the quotation beginning with "7. Quality of Service Performance," the sentence that reads, "The reports submitted under P.A. 02-04 do not appear to meet this description." is deleted.
6. On page 136 of D. 03-10-088, in the first full paragraph below the above-mentioned quotation, the sentence that reads, "From the record of this proceeding, it is unclear whether any other survey data exists." is deleted.
7. On page 136 of D. 03-10-088, the second full paragraph in its entirety, beginning with, "Despite the controversy . . . ." is deleted.

8. On page 136 and continuing on page 137 of D. 03-10-088, the third full paragraph in its entirety beginning with, “Although our previous decision . . .” is deleted.

9. On page 137 of D.03-10-088, the first full paragraph in its entirety beginning with, “In conclusion, we note that . . .” is deleted, and the following paragraph is inserted:

First, we find it difficult to understand how Pacific could have thought that the NRF P.A.02-03 monitoring reports referred only to customer surveys conducted by Commission staff since the definition of the NRF P.A. 02-03 monitoring reports clearly states that “[t]hese surveys are conducted through the Corporate Research organization at Pacific Bell, and historically have been provided to the DRA . . .” (Emphasis added.) Second, the question of whether Pacific was confused about what it is required to submit to the Commission under the NRF P.A. 02-03 monitoring reports is irrelevant. Similarly, the Commission’s staff’s failure to request the NRF P.A. 02-03 monitoring reports earlier is irrelevant. It is important to note that we have not waived this requirement. This Commission has broad constitutional and statutory authority to order SBC to provide us with the customer surveys identified by Overland.

10. On page 193 of D.03-10-088, in Finding of Fact 11, after “NRF” insert: P.A. 02-04.

11. On page 228 of D. 03-10-088, in Finding of Fact 288, the two sentences following “288” are deleted and the following paragraph is inserted:

Regardless of whether Pacific was confused about what it was required to submit under the NRF P.A. 02-03 monitoring reports, or whether the Commission’s staff failed to request the NRF P.A. 02-03 monitoring reports from Pacific during the relevant NRF monitoring period, we have not waived this requirement. We have broad constitutional and statutory authority to order SBC to provide us with the customer surveys identified by Overland.

12. On page 235 of D.03-10-088, in Conclusion of Law 10, the two sentences following “10” are deleted and the following paragraph is inserted:



We hereby order SBC to provide us with the customer surveys, and the results thereof, conducted by third party research firms on behalf of Pacific, identified by Overland in its audit. We find these specific customer surveys to be directly related to the issues of service quality and customer satisfaction addressed in the service quality phase of this proceeding.

13. The record supports the finding that “as initiated” used by P.A. 02-03 includes surveys prepared by Pacific or by third parties at Pacific’s request.

14. On p. 12 of D.04-07-036, OP 14 is deleted and the following paragraph is inserted:

Pacific is ordered to produce each and every survey identified by Overland on page 21-19 of its “Regulatory Audit of Pacific Bell For the Years 1997, 1998 and 1999, Vol. 2, February 21, 2002. In addition to the surveys and results identified by Overland, Pacific is required to produce all customer satisfaction and quality of service surveys and the results thereof, initiated by Pacific and performed by Pacific or any other third party, for the relevant NRF reporting period. “Customer satisfaction survey” also includes any survey designed to measure customer perception of performance of service, whether satisfied or dissatisfied with service. Pacific shall not include surveys that have been previously filed as directed by the “New Regulatory Framework Monitoring Report Assessment (I.87-11-033), Commission Advisory and Compliance Division, May 1, 1992, and listed in Attachment A to that report, “Pacific Bell Monitoring Reports by Code”. Pacific is required to serve copies of all documents responsive to the foregoing on Administrative Law Judge Timothy Kenney, attorneys for ORA and TURN, and the Telecommunications Division within two weeks of the mailing date of this order. Pacific shall serve copies of responsive documents on any other party that requests these documents. All parties shall be given the opportunity to cross-examine a sponsoring witness on behalf of Pacific about these items.

This order is effective today.

Dated December 2, 2004, at San Francisco, California.

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
Commissioners

I dissent.

/s/ MICHAEL R. PEEVEY  
President

I dissent.

/s/ SUSAN P. KENNEDY  
Commissioner